

# Connecticut Office of Consumer Counsel

Mary J. Healey, Consumer Counsel



Ten Franklin Square, New Britain, CT 06051		Year End 2008	
Telephone: (860) 827-2900	Website: <a href="http://www.ct.gov.occ">www.ct.gov.occ</a>	Email: <a href="mailto:OCC.Info@CT.Gov">OCC.Info@CT.Gov</a>	

## OCC NEWSLETTER

**News Alert!**  
**Office of Consumer Counsel is**  
**proposed to be eliminated**  
**under the Governor's**  
**FY2010-FY2011 Biennium Budget**

**OCC's Annual Report Shows**  
**\$500 Million in**  
**Ratepayer Savings from Its Advocacy**

OCC's Fiscal Year 2008 Annual Report to the Governor tracked over \$500 million in direct savings to Connecticut ratepayers from July, 2007 through June, 2008. The OCC continued its advocacy in the four forums in which it has appeared on behalf of ratepayers for 33 years: in the hearing rooms of the DPUC and before the FERC; in state and federal courts; at the Connecticut legislature; and through its membership in state and national professional organizations, boards and committees representing ratepayers' views.

Many of the dockets with outcomes most significant to ratepayers this year were opened at the DPUC in response to legislative mandates to fix the troubles caused by deregulation or consumer outcry over shoddy customer service by utility companies. Dockets included proposed projects for new power plants; customer- side distributed resources; grid-side distributed resources; renewable resources; the need for peaking generation; investigation of the reliability and accuracy of electricity meters; and under- billing followed by catch-up billing of gas customers resulting from rogue meter readers.

OCC advocates seven fundamental approaches to ratemaking which it believes best serve ratepayers:

- Achieving a Return on Equity ("ROE which meets the statutory standard of providing companies with a fair rate of return and ratepayers with just and reasonable rates.) Utility companies by law are required to provide reliable service at reasonable rates and are compensated with a reasonable return for such service;
- Excluding incentive compensation for utility company employees from rate cases, because it is a cost benefit more appropriately borne by shareholders.
- Addressing concerns regarding reliability of service delivery due to transmission constraints and aging infrastructure;
- Maximizing the quality and reliability of customer service, including meter and billing accuracy. Companies must become proactive rather than reactive to billing and meter problems, and create a responsive customer service culture;
- Socialization of non-hardship uncollectible expenses: this burden should fall on all firm utility customers, not only on those who have remained on Standard Service or Last Resort Service. It is a social cost that ought to be shared, and this policy should be implemented across the board for all utility companies. Uncollectible expenses should be the obligation of every firm paying customer;
- Limiting implementation of decoupling because decoupling mechanisms inherently harm ratepayers by shifting the normal business risks of utility companies onto ratepayers. Decoupling also has been shown to be an ineffective and overly expensive means to promote energy conservation, when other more cost-effective solutions exist. Broad-scale decoupling is incompatible with traditional, well-respected ratemaking principles.

# Connecticut Office of Consumer Counsel

Mary J. Healey, Consumer Counsel



## *Annul Report Cont'd*

On the legal front, OCC brought about or participated in wide-ranging litigation taking on large corporations such as AT&T as it rolled out its U-Verse program, and the federal government as it supported providing immunity to telecom companies for potentially illegal spying on American citizens.

Click on the following link for details on all of OCC's activities, including its full calendar of commitments to state and national boards and commissions where it fights for ratepayer concerns: [www.ct.gov/occ](http://www.ct.gov/occ).

## **VRADs Still Popping Up Like Illegal Mushrooms**

The OCC has filed an administrative appeal in state superior court, ***OCC v. DPUC***. The OCC has complained to the Court that the September 2008 VRAD Decision misapplies the law, reaches factual conclusions that are unsupported by or are outside the record evidence of the Docket and makes a series of critical and substantial errors and omissions of fact and law.

The Decision must be remedied by a state judge. The Department properly held that the statute controls AT&T's installations of VRADs across Connecticut, but improperly allowed AT&T to escape its responsibility for over 2,000 boxes already installed. The OCC maintains that the law must be consistently applied from the first VRAD installed to all those that have followed, and those that will be installed in the future.

In May, the DPUC properly ruled that a state statute requires AT&T to provide adequate prior notice and obtain the consent of all adjoining proprietors prior to installing VRAD cabinets in the public rights-of-way. The DPUC correctly stated that "AT&T is directed to provide notice and obtain consent before starting any work to install any more VRADs or other facilities in the public roads of Connecticut." Most importantly, the DPUC further stated that "[f]or VRAD cabinets already installed, AT&T shall act promptly to request and document informed consents."

Unfortunately, by June the Department had improperly changed its position and adopted AT&T's "claim" that those property owners who had never received adequate notice of the impending installation of these half-ton, 220-volt electrified steel cases attached two feet off the ground on utility poles across the state did not require notice. The notices that had been sent to property owners by AT&T only stated that the installation would be "telephone equipment" with no indication of the huge size or potential dangers of them. Most importantly, the notices falsely claimed that the DPUC had given its blessing to the particular installation in question. In fact, the DPUC had no knowledge of the entire installation process.

The OCC has since filed a request with the DPUC to reopen the Docket to directly address the specifics of about 40 complaints filed by consumers whose property has been permanently marred by the arrival of one of these huge cabinets, as well as complaints by politicians and municipalities. The DPUC has rejected the OCC's request stating that it will rely instead on the good faith of AT&T to resolve these complaints. The OCC will continue to monitor whether AT&T meets this challenge and will pursue all means available to make certain that the law is properly observed and the rights of consumers are respected.

## **The OCC Takes The U-Verse Battle To The Second Circuit Court Of Appeals**

After prosecuting the rights of consumers in the federal district court of Connecticut since 2007, the OCC has won four different and totally supportive decisions from a federal judge in ***OCC v. AT&T*** that held that AT&T was incorrect in its insistence that its video services were more like email or the Internet than cable. However, AT&T has persisted in carrying the battle all the way to the Second Circuit Court of Appeals in New York. The OCC will continue to argue the case no matter where it takes us since we believe the stakes are huge for all Connecticut consumers.

## Connecticut Office of Consumer Counsel

Mary J. Healey, Consumer Counsel



### *U-Verse Battle Cont'd*

The OCC believes that any advantages granted only to AT&T by the DPUC or the legislature will only prompt the cable companies to lower their services to the level granted to AT&T: in short, a downward spiral will be created dragging consumers rights with it.

The OCC has always argued in favor of competition in the telecommunications market. Unfortunately, the DPUC and legislature have gotten caught up in the marketing frenzy promoted by AT&T that it should be granted special status or it will not make the investment in video in Connecticut that it has promised. As the OCC has stated publicly, due to the great strides the cable operators have made in providing consumers with video and broadband services, coupled with their more recent gains in telephone and wireless services, AT&T has no choice but to make the effort to provide consumers each of these services. Only in this way, and across a level playing field, can consumers receive the lower prices, improved service quality, and innovative technologies that true competition can provide.

### **OCC Promotes Basic High-Speed Broadband Service To Areas That Have No DSL Or Cable Modem Service Or Where Internet Speeds Are Inadequate**

A Principal Attorney on the OCC staff was nominated by House Majority Leader (now Speaker) Christopher Donovan to be a voting member of the Connecticut Broadband Internet Coordinating Council, a 10-member body authorized by the legislature in 2007 to coordinate efforts to bring high-speed broadband services to "unserved" areas of the state, which most notably includes the two northern rural corners. In the next few years, through the Connecticut Broadband Internet Coordinating Council and at the state General Assembly, the

OCC will work diligently toward increasing the interaction between the FCC and other federal agencies with state and local efforts will enhance cooperative federalism, long demonstrated to be the most effective method for tackling national problems. The OCC is hopeful that carefully defined proposals offered to the federal government will provide Connecticut communities with Stimulus Package funding to accomplish broadband projects across the state that will benefit many unserved residents.

It seems apparent to most observers in Connecticut and in Congress that broadband has become an essential service for education and business development, as well as health services. A valid public policy goal should be to focus the power of government to stimulate broadband deployment and adoption without discouraging private investment and innovation. This will require surveying and mapping the current status to reach high speed broadband to all consumers. There is a need for enhanced access to computer equipment, education to increase subscribership to broadband services and promoting high transport speeds.

This can best be achieved by employing a new calculus of profits and losses that includes the public policy goals that are reached or lost by failing to balance deployment of broadband technology. This is necessary, because AT&T and the cable operators do not foresee an ability to realize a return on the investment they face in the most rural parts of the state. They are thus disinclined to roll broadband out in those areas. Due to the deregulation that has characterized much of public utility law in the past, most particularly in telecommunications, these companies are under no obligation to provide all consumers across Connecticut with high speed broadband services. Thus, the OCC has actively sought alternative financial and infrastructure avenues to benefit all the state's consumers.



# Connecticut Office of Consumer Counsel

Mary J. Healey, Consumer Counsel



## **AT&T Service Quality Case**

On July 24, 2008, the OCC filed a petition with the DPUC for enforcement of service quality standards for AT&T-Connecticut. Every month for eight years in a row, the company has failed to meet the regulatory standard for repair of out-of-service lines. Current DPUC regulations require that 90 percent of all out-of service repairs be cleared within 24 hours.

As the Petition notes, "A working telephone is an economic and safety lifeline for customers. An out-of-service condition cuts that lifeline, and repair should be a top priority. The Department has explicitly recognized the importance of a working telephone by requiring the Telco [AT&T] to meet a specific repair service standard. After eight years of dismal performance by the Telco, action needs to be taken expeditiously by the Department to enforce the Repair Time Standard and thereby make it a priority for the Telco."

The OCC is also looking for improvements in AT&T's customer service center performance. AT&T's performance, cited in the Petition, includes the worst record, compared to carriers such as Verizon and Comcast Phone, in measures of average speed of answer, abandoned calls and calls answered within 60 seconds.

The OCC recommends that the Department require AT&T to submit:

- (1) a timetable for achieving the Repair Time Standard within 3 months;
- (2) a plan with specific steps to improve its repair and call center service; and
- (3) a timetable for achieving within 6 months an average speed of answer of 45 seconds.

The Petition states, "Any Telco failure to achieve these measures should be met with significant, ongoing penalties that continue until the standards are achieved."

The OCC is not alone in recognizing the seriousness of this matter. The Attorney General and the Communications Workers of America

union have intervened in the case. In addition, Governor M. Jodi Rell has sent a letter to AT&T's chief executive officer calling for AT&T to fix its service quality performance.

As the case progresses, more information comes to light on the out-of-state operation of AT&T's Connecticut service. For example, a water main break in St. Louis, Missouri on the morning of December 6, 2008, brought AT&T's customer service center operation in Connecticut to a standstill. It was not until the evening of December 10, that all affected services were restored. Another example is the monitoring of our E-911 network, which is done in St. Louis, San Diego, California and Pune and Noida, India. The impact on Connecticut of this remote operation will have to be carefully examined in the proceeding. The second hearing in the case is scheduled for February 24, 2009.

## **Integrated Resource Planning**

OCC was an active participant in the first integrated resource planning docket since electric restructuring, mandated by Section 51 of Public Act 07-242, An Act Concerning Electricity and Energy Efficiency. The docket, No. 08-07-01 (the "IRP Docket"), provided the final level of review for an integrated resource plan drafted by the electric distribution companies, reviewed and revised by the Connecticut Energy Advisory Board ("CEAB"), and presented to the Department of Public Utility Control on August 1, 2008. Along with OCC, the CEAB, the Attorney General and the Connecticut Clean Energy Fund, numerous stakeholders participated in the IRP Docket, including the electric distribution companies, generators, suppliers, Environment Northeast, and the Energy Conservation Management Board. This first "post-restructuring" integrated resource planning process was highly instructive and the Department's decision should provide a model for future integrated resource planning.



## **SCG and CNG Ratepayers Receive Bill Reductions Due to Overearnings**

On October 24, 2008 and July 30, 2008, respectively, the DPUC issued Decisions that reduced the natural gas bills for customers of The Southern Connecticut Gas Company ("SCG") and Connecticut Natural Gas Corporation ("CNG") due to earning more than the level of allowed Return on Equity ("ROE") set in each company's last rate case.

For SCG, the DPUC determined that the overearnings total more than \$15.1 million and ordered the Company to provide relief to customers in the form of a line item credit on customers' bills of \$0.0621 per Ccf which will be applied to the bills of all "firm" sales and transportation customers. For SCG's average non-heating residential customer using 40 Ccfs per month, the credit will amount to approximately \$2.48 per month, while heating residential customers using 150 Ccfs per month will receive a credit of approximately \$9.32 per month.

In August 2008, the Company submitted a letter of intent to file an application for an increase in rates. The Department received the Company's rate application on September 29, 2008. In an October 16, 2008 letter, the DPUC found the application to be insufficient and incomplete. As a result, on October 29, 2008 the Department issued a letter to SCG indicating that based on the volume of the revised filing, the Company is hereby directed to file a completely new Application. Once the new Application is filed and it includes all of the required testimony and exhibits, the Department will start the statutory 150-day time limit review and approval process. The line item credit on customers' bills will remain in place until new rates are set at the conclusion of the rate case.

For CNG, the Department similarly ordered that the Company had over earned by more than \$15.5 million and ordered the Company to provide relief to customers in the form of a line

item credit on customers' bills of \$0.0621 per Ccf which will be applied to the bills of all "firm" sales and transportation customers. For CNG's average non-heating residential customer using 40 Ccfs per month the credit will amount to approximately \$2.48 per month while heating residential customers using 150 Ccfs per month will receive a credit of approximately \$9.32 per month. The credit is subject to a true-up in the Company's next rate case, which was ordered to be filed by the DPUC soon.

## **DPUC Completes Groundbreaking Docket Approving the Construction of New Peaking Power Plants at Cost-of-Service Rates**

The Department of Public Utility Control ("DPUC") has completed a docket (Docket No. 08-01-01) that will lead to the construction of about 520 megawatts of new power plants. The plants are referred to as "peaking power plants," as they are designed to run during times of peak electricity usage (typically these would be very hot days in the summer and very cold days in the winter). The new plants will be located in Milford, Middletown and New Haven, will be able to operate on either natural gas or oil, if necessary, and will be subject to strict emissions standards by the Department of Environmental Protection. The new 520 megawatts of peaking power plants represent a robust amount of new power plant capacity—about 7% of Connecticut's overall capacity need. The Office of Consumer Counsel strongly supports the selections made by the DPUC.

One of the interesting features about this docket is that Connecticut's traditional utilities (The Connecticut Light and Power Company and The United Illuminating Company) were allowed to compete with merchant power plant owners (such as NRG, PSEG, Dynegy, etc.) in the process.

## Connecticut Office of Consumer Counsel

Mary J. Healey, Consumer Counsel



### *Cost of Service Rates Cont'd*

Another interesting feature here is that, by law, the peaking power plants selected by the DPUC will be paid in accordance with their costs of service, which includes the opportunity (though not a guarantee) for the plant owner to earn a reasonable, regulated rate of return on their investment. This method of payment closely reflects the approach that was used for compensating power plants prior to deregulation. This arrangement will ease the cost and difficulty of financing the power plants, as the risks are reduced when compared to the prospect of receiving compensation from the ISO New England markets. The lower financing costs and the cost-of-service approach should in turn stabilize, and, perhaps, even reduce the electricity rates of Connecticut customers. The new plants should also increase electric reliability and reduce the market power of existing power plant owners. The three new plants are scheduled to come on line early in the next decade (2011-12).

The docket was conducted by the DPUC pursuant to Section 50 of Public Act 07-242, the large energy bill passed by the Legislature in 2007.

### **OCC Urges DPUC To Investigate Measures To Prevent Future Illegal Spying By US Government**

Along with Connecticut ACLU, the OCC was the only party authorized by the federal courts to intervene in the national class action composed of over 40 lawsuits. They were filed over the last three years to attempt to halt the illegal wiretaps the executive branch launched against U.S. citizens. As one of two intervenors, the OCC was authorized by the federal court to participate in the United States v. Palermينو (a commissioner at the DPUC), and we followed the case from Connecticut to Miami and then to San Francisco, where the case continues to be heard.

After much acrimonious argument over the summer of 2008, however, Congress bent to political pressure and enacted the FISA Amendments Act. This amended Act specifically attempted to preclude the outstanding lawsuits from proceeding in order to overtly protect the telephone companies from the extensive litigation exposure they faced due to their improper cooperation in the executive branch illegal spying. It has been gratifying to see the courage demonstrated by the federal district court judge in San Francisco in demanding that the Department of Justice fully argue its basis for insisting that these claims be dismissed. The OCC hopes to have the opportunity to argue this position before the Northern California district later this spring at a hearing challenging the constitutionality of the new federal legislation by accusing the government of violating the rights of millions of Americans by giving legal immunity to telcos that took part in the federal wiretapping program.

The OCC has also filed pleadings with the DPUC requesting that it continue to review state-law based methods to protect consumer privacy from illegal intrusions aided by local telephone companies in violation of state privacy laws.

### **Water Infrastructure Replacement Mechanism Continues to Move Forward**

In 2007 Connecticut became one of about a dozen states that have adopted an Infrastructure Surcharge mechanism for the State's regulated water utilities when Public Act 07-139, An Act Concerning Water Company Infrastructure Projects (Act or Public Act), became Connecticut law. This was accomplished through a collaborative process involving the water industry, the DPUC and the OCC.



# Connecticut Office of Consumer Counsel

Mary J. Healey, Consumer Counsel



## *Water Infrastructure Cont'd*

The intended purpose of the Act is to enable the acceleration of the rate of replacement and/or rehabilitation of existing water system infrastructure to mitigate the effect of decay of aging water systems and promote conservation measures. The Act allows a water company to use a rate adjustment mechanism, such as a water infrastructure and conservation adjustment ("WICA"), for eligible projects, completed and in service, for the benefit of the water company's customers. The amount of the WICA adjustment may not exceed 5% of a company's retail water revenues in any calendar year or 7.5% between rate cases.

The DPUC held a generic docket (Docket No. 07-09-09) on what shall be included in a water company's infrastructure assessment report and annual reconciliation reports and the criteria for determining priority of eligible projects. The water companies, Connecticut Water Works Association and the OCC filed comments and testified in the case. The DPUC issued its final decision on April 30, 2008, establishing the process for administering the rate adjustment mechanism for the funding of eligible water infrastructure improvement projects.

This Decision provided the requirements for the Initial Assessment Report which highlights existing infrastructure inventory, and ranks potential WICA eligible projects based on seven criteria. Aquarion Water Company of Connecticut and Connecticut Water Company have filed their Initial Assessment Reports. The Aquarion case has been briefed and should be finalized by the end of the year. The Connecticut Water case will have hearings in the near future.

## **OCC BROCHURE AVAILABLE**

OCC recently published an informational brochure to tell ratepayers who we are, what we do, and describes our recent docket and court win on their behalf. The brochure will be distributed to all public libraries in Connecticut and made available for downloading from OCC's website ([www.ct.gov/occ](http://www.ct.gov/occ)). Call OCC at 860-827-2900 to request copies.



**The State of Connecticut's Office of Consumer Counsel**, located at Ten Franklin Square, New Britain, Connecticut 06051, is an independent state agency authorized by statute to act as the advocate for consumer interests in all matters which may affect Connecticut consumers with respect to public service companies, electric suppliers and persons, and certified intrastate telecommunications service providers.

The Office of Consumer Counsel is authorized to appear in and participate in any regulatory or judicial proceedings, federal or state, in which such interests of Connecticut consumers may be involved, or in which matters affecting utility services rendered or to be rendered in this state may be involved.